BOONRICH SDN BHD v. THE CHIEF CONSERVATOR OF FORESTS, SABAH FORESTRY DEPARTMENT & ANOR

COURT OF APPEAL, PUTRAJAYA
HANIPAH FARIKULLAH JCA
RAVINTHRAN PARAMAGURU JCA
GHAZALI CHA JCA
[CIVIL APPEAL NO: S-01(NCVC)(A)-3-01-2020]
15 MARCH 2023

Abstract – *An application to challenge the decision of a public authority should only be commenced by way of judicial review pursuant to O. 53 of the Rules of Court 2012. It is an abuse of process for one to proceed by way of an ordinary action when he seeks to establish that a decision or action of a person or body infringes rights which are entitled to protection under public law.*

ADMINISTRATIVE LAW: *Exercise of administrative powers – Decision – Circular by Chief Conservator of Forests of Sabah banning export of logs from Sabah – Application vide originating summons ('OS') challenging decision – True nature of remedies – Whether certiorari and mandamus – Whether challenge should have been commenced by way of judicial review – Whether OS meant to circumvent limitation period under O. 53 of Rules of Court 2012 – Whether 'decision' amenable to challenge under O. 53 – Whether OS abuse of court process*

CIVIL PROCEDURE: *Mode of commencement – Challenging act of public authority – Circular by Chief Conservator of Forests of Sabah banning export of logs from Sabah – Application vide originating summons ('OS') – True nature of remedies – Whether certiorari and mandamus – Whether should have been commenced by way of judicial review – Whether OS meant to circumvent limitation period under O. 53 of Rules of Court 2012 – Whether 'decision' amenable to challenge under O. 53 – Whether OS abuse of court process – Rules of Court 2012, O. 15 r. 6*

On 23 May 2018, the Chief Conservator of Forests of Sabah issued a circular stating that the export of logs in any form from Sabah was temporarily banned to facilitate studies on the costs and benefits of log exports. Log exporters were advised not to commit log shipments for export with immediate effect. The appellant was a company involved in teak tree plantation. While negotiations for sale of the matured trees on the appellant's land were being conducted, the Chief Minister of Sabah announced the ban on the export of logs which included cultivated logs. Prior to the ban, the appellant had been issued with a registration certificate by the Conservator of Forests under the Sabah Forest (Timber) Enactment 2015 as an exporter and supplier. The appellant appealed to the first respondent for exemption from the export ban in respect of the sale of cultivated logs as they were ready

for harvesting and because the land occupied by the matured teak trees was needed for cultivation of another crop. However, the appellant did not receive a reply. The appellant thus challenged the decision of the Sabah Government, by way of originating summons ('OS'), in imposing the ban on the export of logs from the state. At the High Court, the respondents argued that given the nature of the remedies sought by the appellant and the fact that the action was against the Government, the action should have been commenced by way of judicial review and the OS was an abuse of process. However, the High Court Judge only addressed the issue of whether the Sabah Government had the power to impose a ban on the export of timber from the state and held that the power to control export of timber had been delegated to the Forestry Department and therefore, the circular issued by the Sabah Government was not illegal or unconstitutional. The OS was thus dismissed with costs. In this appeal, the argument that the OS was a non-starter because the remedies sought should have been applied by way of judicial review was raised as a preliminary point.

Held (dismissing appeal; affirming decision of High Court)
Per Ravinthran Paramaguru JCA delivering the judgment of the court:

(1) An aggrieved party, seeking relief against a public authority concerning an infringed right protected under public law, must proceed by way of the specific procedure of judicial review provided under O. 53 of the Rules of Court 2012 ('ROC'). Although the main relief sought was for declaratory orders, which could be availed by way of originating summons under O. 15 r. 6 of the ROC, the appellant had prayed for an order to 'cancel' the circular and that the respondents 'allow' it to extract, remove and export timber. Despite the studious and calculated avoidance of public law language in the prayers, the true nature of the remedies sought were *certiorari* and *mandamus*. The argument that O. 15 r. 6 of the ROC could support the remedies sought in the OS was without merit as the ultimate consequential reliefs sought were prerogative remedies which could only be availed in a judicial review action and not an ordinary action. (paras 17 & 20-22)

(2) The claim of the appellant that their right to export cultivated timber had been infringed was based solely on substantive principles of public law. The appellant questioned Government policy which had been expressed in a circular which applied to an entire class of persons, *ie*, all timber exporters in Sabah and not solely to the appellant, substantively a public law matter. If the appellant was allowed to proceed by an ordinary action, the protection afforded in O. 53 to public authorities, such as the filter of a leave application and the limitation of time, could not be availed by the Sabah Government. The OS was only filed some ten months later as the appellant circumvented the limitation

period of three months stipulated in O. 53 by filing an OS. Hence, there was merit in the preliminary point that the OS was an abuse of the process of the court and was therefore a non-starter. (paras 23-25)

(3) There was no merit in the appellant's submission that the reason for filing an OS instead of a judicial review application was that the circular expressed a general policy and that it was not a 'decision'. The letter of the Conservator, in reply to the appellant's letter applying for a permit to export logs, stated that no permit would be issued to export logs because of the ban imposed by the circular. Therefore, for all intents and purposes, it was very much a decision of a public authority that was amenable to challenge under O. 53 of the ROC. In the premises, the reason for not pursuing relief *via* a judicial review appeared to be an afterthought. (para 26)

(4) The appellant could not pray for declaratory relief as to any legal character or status under O. 15 r. 6 of the ROC or under s. 41 of the SRA as, at the time of the filing of the OS, the appellant's registration certificate to export logs had expired. Under s. 9 of the Forest (Timber) Enactment 2015, the renewal application must be made 60 days before expiry. The appellant did not apply to renew within the said 60 days. By the time the letter dated 6 September 2018 was submitted to the Conservator, the registration certificate had expired and no fresh formal application was made under s. 6. Therefore, the OS, if intended to seek only declaratory relief in respect of legal character or status, was premature. (para 27)

Case(s) referred to:

Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors [2008] 6 CLJ 473 CA ***(refd)***

Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors [2010] 5 CLJ 865 FC ***(refd)***

O'Reilly v. Mackman [1982] 2 All ER 112 ***(refd)***

YAB Dato' Dr Zambry Abd Kadir & Ors v. YB Sivakumar Varatharaju Naidu; Attorney-General Malaysia (Intervener) [2009] 4 CLJ 253 FC ***(refd)***

Legislation referred to:

Rules of Court 2012, O. 15 r. 16, O. 53
Rules of the High Court 1980, O. 15 r. 6
Specific Relief Act 1950, s. 41

For the appellant - Chung Jiun Dau & Trevor Kenneth Maringking; M/s Maringking & Co

For the respondents - Mohd Ikhwan Ramlan; State Attorney-General's Chambers, Sabah

[Editor's note: Appeal from High Court, Kota Kinabalu; Originating Summons No: BKI-24NCvC-44-3-2019(HC3) (affirmed).]

Reported by S Barathi

A

JUDGMENT

Ravinthran Paramaguru JCA:

[1] This is an appeal against the decision of the High Court that dismissed the originating summons of the appellant company who challenged the
B decision of the Sabah Government to impose a ban on the export of logs from the state. The Chief Conservator of Forests is the first respondent whereas the State Government of Sabah is the second respondent.

Background Facts

C **[2]** On 23 May 2018, the Chief Conservator of Forests of Sabah issued Circular CF:09/2018 (the circular). The circular stated that the export of logs in any form from Sabah was temporarily banned to facilitate studies on the costs and benefits of log exports. Log exporters were advised not to commit log shipments for export with immediate effect.

D **[3]** The appellant is a company that runs a teak tree plantation. It has planted teak trees on land measuring 2,232.60 acres in the District of Lahad Datu, Sabah since 1992. Export of planted teak trees commenced around 2002. In the affidavit in support, it is averred that the State and Federal Governments had encouraged and promoted the cultivation of the teak trees.
E According to the appellant, in early 2018, of the 220,000 teak trees planted on the land in question, 64,828 of the trees were matured and ready for harvest and export. The appellant also wanted to cultivate moringa trees on the land after harvesting the said teak trees for the reason that it was more profitable. The appellant promoted the sale of the teak logs in the country as well as overseas. The only responses it received were from overseas, *ie*,
F Dubai, India and China. While negotiations for sale were being conducted, the Chief Minister of Sabah announced the ban on the export of logs which included cultivated logs. Prior to the ban, the appellant had been issued with a registration certificate by the Conservator of Forest under the Sabah Forest (Timber) Enactment 2015 as an exporter and supplier.

G **[4]** The appellant appealed to the first respondent for exemption from the export ban in respect of the sale of cultivated logs as they were ready for harvesting and because the land occupied by the mature teak trees was needed for moringa cultivation. However, the appellant did not receive a reply. The appellant argued that the Sabah Government has no power to
H impose a ban on export of timber logs from the state. The appellant's estimate of the total losses due to the ban on export of logs and the loss of opportunity to utilise the land with new high yielding crops is RM91,565,900.

I **The Defence**

[5] The respondents did not dispute the fact that a temporary ban on export of all logs was issued on 23 May 2018. The purpose was to facilitate cost-benefit studies on the export of logs from Sabah. The respondents also

did not dispute the fact that the appellant wanted to export cultivated timber as opposed to timber from natural forest. However, in the affidavit in opposition, the respondent maintained that the Sabah Government has the power to impose the said ban on export of all timber logs. The respondents also averred that the appellant could not export teak logs in any event as their registration certificate to export had expired on 30 June 2018. As for the instant action, the respondents averred that it is premature as the appellant did not wait for the outcome of their appeal to the Chief Minister to exempt the export of the cultivated logs in question. In respect of the mode of action, the respondents pleaded in the affidavit in opposition that the circular should have been challenged *via* a judicial review action instead of by way of originating summons. It followed that the originating summons action is an abuse of the process of the court.

Decision Of High Court

[6] Before the High Court, it was argued by counsel for the respondents that given the nature of the remedies sought by the appellant and the fact that the action was against the government, the action should have been commenced by way of judicial review and that the originating summons was an abuse of process. However, the learned High Court Judge only addressed the issue of whether the Sabah Government has the power to impose a ban on the export of timber from the state. His Lordship had regard to the Customs (Prohibition of Exports) Order 2017 which prohibited certain goods from the country except under an export licence. In Schedule 2 of the said Order, the Forestry Department of Sabah is authorised to issue the licence insofar as export of logs from the state is concerned. His Lordship held that the power to control export of timber had been delegated to the Forestry Department and therefore, found that the circular in question issued by the Sabah Government was not illegal or unconstitutional. For the above reason, he dismissed the originating summons with costs.

Issues

[7] Before us, the argument that the originating summons is a non-starter because the remedies sought should have been applied by way of judicial review was raised as a preliminary point. As we stated earlier, the learned High Court Judge did not address this issue in his judgment as His Lordship only dealt with the issue of whether the Sabah Government has the power to ban export of logs.

Mode Of Action

[8] In the instant originating summons, the appellant is not merely praying for the declarations relating to the power of the Sabah Government to ban export of logs from the state but is also praying for an order that the latter "cancel" the circular and allow them to export timber. Counsel for respondents argued that as the remedies sought in the instant originating

summons involve a challenge to the decision of a public authority and the prayers sought are not only declaratory prayers, the proper mode of application is judicial review under O. 53 of the Rules of Court 2012. In support, he cited the decision of the Court of Appeal in *Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors* [2008] 6 CLJ 473; [2008] 5 MLJ 773 where Abdul Malik Ishak JCA said as follows:

> [10] In a nutshell, any application to challenge the decision of the first defendant/respondent, a public authority, can only be commenced by way of a judicial review under the new O. 53 of the RHC. Amendments to the former O. 53 of the RHC were made by way of a gazette notification *vide* PU (A) 342/2000 with effect from 21 September 2000 and the new O. 53 of the RHC is rather comprehensive. It governs the public law remedy of judicial review and it replaces the former O. 53 of the RHC prerogative remedies of *certiorari*, prohibition and *mandamus*.

[9] The above decision was affirmed by the Federal Court which is reported as *Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 5 CLJ 865; [2010] 3 MLJ 145. We shall advert to this oft-quoted judgment later. On the other hand, counsel for the appellant argued that judicial review is not the exclusive mode to challenge the actions of a public authority. In support, he cited O. 15 r. 16, s. 41 of the Specific Relief Act 1950 (Revised 1974) Act 137 (the SRA) and the Federal Court decision in the case of *YAB Dato' Dr Zambry Abd Kadir & Ors v. YB Sivakumar Varatharaju Naidu; Attorney-General Malaysia (Intervener)* [2009] 4 CLJ 253; [2009] 4 MLJ 24.

[10] Order 15 r. 16 of the Rules of Court 2012 says that an action cannot be objected to merely because the only relief sought is a declaratory judgment without any consequential relief. It reads as follows:

> 16. Declaratory judgment (O. 15 r. 16)
>
> No action or other proceeding shall be open to objection merely on the ground that a declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not consequential relief is or could be claimed.

[11] We shall now refer to s. 41 of the SRA which permits a person to seek a declaration without the need for further relief. The provision (shorn of Explanation and Illustrations) reads as follows:

> Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to the character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in that suit ask for any further relief:
>
> Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration or title, omits to do so.

[12] This provision came up for judicial consideration in the *YAB Dato' Dr Zambry*'s case (*supra*). In that case, the applicants challenged their suspension from the Legislative Assembly *via* an originating summons on the ground that it was against the Constitution of Perak. The respondent who was the Speaker of the Legislative Assembly filed an application to strike out the originating summons action on the ground that the matters complained of were not justiciable and that the proceedings should have been commenced by judicial review.

[13] The Federal Court held that the applicants were entitled to seek a declaration under O. 15 r. 6 of the Rule of High Court 1980 notwithstanding the fact that they proceeded by way of originating summons instead of judicial review. In our respectful view, the *YAB Dato' Dr Zambry*'s case cannot be relied on by the appellant to support the argument that judicial review can be avoided whenever a declaratory prayer is sought against a public authority. The case was decided on its own facts. We say so for the following reasons.

[14] Augustine Paul FCJ, writing for the Federal Court, said that the remedies of declaratory relief under O. 15 r. 16 and *certiorari* are alternatives and not mutually exclusive. Nonetheless, His Lordship acknowledged that the general rule laid down by the House of Lords in the celebrated case of *O'Reilly v. Mackman* [1982] 2 All ER 1124 has been adopted in Malaysia. The general rule is that it is an abuse of process for a person to proceed by ordinary action if he seeks to establish that a decision or action of a person or body infringes rights which are entitled to protection under public law.

[15] His Lordship then proceeded to quote the following passage from the judgment of Lord Diplock in *O'Reilly v. Mackman* (*supra*) and said that the rule is not absolute:

> My Lords, I have described this as a general rule; for, though it may normally be appropriate to apply it by the summary process of striking out the action, there may be exceptions, particularly where the invalidity of the decision arises as a collateral issue in a claim for infringement of a right of the plaintiff arising under private law, or where none of the parties objects to the adoption of the procedure by writ or originating summons. Whether there should be other exceptions should, in my view, at this stage in the development of procedural public law, be left to be decided on a case to case basis a process that Your Lordships will be continuing in the next case in which judgment is to be delivered today.

[16] Augustine Paul FCJ said that the fact that the applicants were challenging their suspension from the Legislative Assembly was a matter that affected their "legal status within the meaning of s. 41" of the SRA. It was for this very reason that the declarations sought were granted.

[17] In the Federal Court case of *Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors* (*supra*) that we mentioned earlier, James Foong FCJ conducted a thorough analysis of the law relating to the mode of action that must be utilised in suing a public authority. His Lordship adopted the principle in *O'Reilly v. Mackman* (*supra*) that an aggrieved party seeking relief against a public authority concerning an infringed right protected under public law must proceed by way of the specific procedure of judicial review provided under Order 53. His Lordship also acknowledged that there are exceptions to this general rule and said that the *YAB Dato' Dr Zambry*'s case is a case that fell under the said exceptions as it involved a declaration as to legal character or status. The relevant passage from the judgment of James Foong FCJ at the Federal Court is as follows:

> This general rule enunciated in *O'Reilly v. Mackman* has in fact been acknowledged by this court in *Majlis Perbandaran Ampang Jaya v. Steven Phoa Cheng Loon & Ors* and repeated in *YAB Dato' Dr Zambry*. However, like all general rule, there are exceptions. This again was recognised by Lord Diplock in *O'Reilly v. Mackman* where he referred to 'particularly where the invalidity of the decision arises as a collateral issue in a claim for infringement of a right of the plaintiff arising under private law or where none of the parties objects to the adoption of the procedure by writ, or originating summons'. Then of course there is the exception for a claim against the public authority for negligence as decided in *Majlis Perbandaran Ampang Jaya v. Steven Phoa Cheng Loon & Ors.* There may be others and these 'are left to be decided on a case to case basis' as spoken of by Lord Diplock in *O'Reilly v. Mackman*. *The circumstances in YAB Dato' Dr Zambry is obviously one of them where this court found that a challenge by the appellants of their suspension from attending a State Legislative Assembly is a matter that affects their legal status is an exception. For this, the aggrieved party can commence their claim by way of an originating summons rather than an application under O. 53 of the RHC.* (emphasis added)

[18] James Foong FCJ cautioned that a challenge on the appropriate procedure is very much fact-based and that the judge must ascertain whether there is public law element in the case. The general guideline given by his Lordship is as follows:

> **If the claim for infringement is based solely on substantive principles of public law then the appropriate process should be by way of O. 53 of the RHC.** If it is a mixture of public and private law then the court must ascertain which of the two is more predominant. If it has substantial public law element then the procedure under O. 53 of the RHC must be adopted. Otherwise it may be set aside on ground that it abuses the court's process. But if the matter is under private law though concerning a public authority, the mode to commence such action under O. 53 of the RHC is not suitable. Aside from this, there could be other circumstances like the kind in *YAB* [2010] 3 MLJ 145 at 173 *Dato' Dr Zambry*. Much depends on the facts of the case. (emphasis added)

[19] We shall now turn to the facts of the instant challenge on the procedure employed by the appellant. The reliefs sought by the appellant in the originating summons are as follows: A

(1) A declaration that the Chief Conservator of Forests Circular CF:09/2018 dated 23.05.2018 banning the export of logs is unconstitutional and *ultra vires* the Federal Constitution; B

(2) A declaration that the respondents have no right under the Federal Constitution to regulate, control and monitor the trade of export from Malaysia any timber crop cultivated on private alienated land;

(3) A declaration that the respondents by banning the export of logs from Sabah are discriminating against the Plaintiff, which is a wholly owned Bumiputera private company, in the timber crop cultivation industry. C

(4) A declaration that the appellant has the right and is entitled to export out of Sabah, Malaysia the timber crop which it has commercially cultivated on its own alienated land; D

(5) An order that the respondents do forthwith cancel the Chief Conservator of Forests Circular CF:09/2018 dated 23.05.2018;

(6) An order that the appellant be allowed to extract, remove and export the commercially cultivated timber crop from its own alienated land; E

(7) General damages against the first and second respondent to be assessed in the sum of not less than RM91,565,900.00;

(8) Discretionary interest of 8% per annum pursuant to Section 11 of the Civil Law Act 1956 on the Judgment sum from the date of issuance of the Chief Conservator of Forests Circular CF:09/2018 dated 23.05.2018 until the date of Judgment and statutory interest of 5% per annum from the date of Judgment until date of full realization; F

(9) Costs; and

(10) Any further relief deemed fit and proper. G

[20] As we said earlier, counsel for the appellant submitted that the main relief is for declaratory orders which can be availed by way of originating summons under O. 15 r. 6 of the Rules of Court 2012. However, we note that in prayer (5) of the originating summons, the appellant has prayed for an order to "cancel" the circular in question. As the action or decision that H is impugned is that of a public authority, the word "cancel" cannot mask the actual remedy sought by the appellant. What the appellant actually seeks is a quashing order which can only be granted by way of *certiorari* under O. 53 of the Rules of Court 2012.

[21] In prayer (6), the appellant has prayed that the respondents "allow" I it to extract, remove and export timber. This is a prayer for an order from the court to command a public authority to perform a specific act which it

A is obliged to do under the law. It is also means that the Sabah Government must grant it a registration certificate to export logs. This type of remedy is only available as *mandamus* under O. 53 of the Rules of Court 2012.

[22] Thus, despite the studious and calculated avoidance of public law language in the prayers, the true nature of the remedies sought are *certiorari* B and *mandamus*. In the premises, the argument that O. 15 r. 16 of the Rules of Court 2012 can support the remedies sought in the originating summons is without merit as the ultimate consequential reliefs sought in prayers (5) and (6) are prerogative remedies which can only be availed in a judicial review action and not ordinary action. For this reason alone, it is plain that only C judicial review is the eminently suitable mode of action for the reliefs that the appellant seeks.

[23] Furthermore, in the instant case, the claim of the appellant that their right to export cultivated timber has been infringed is based solely on substantive principles of public law. The appellant has questioned D government policy which has been expressed in a circular which applies to an entire class of persons, *ie*, all timber exporters in Sabah and not solely to the appellant. For that reason, we do not discern any private law right in this case such as negligence or declaration as to the status of the appellant. It is substantively a public law matter, *ie*, whether the Sabah Government has the E power to ban the export of all timber including cultivated timber.

[24] If the appellant is allowed to proceed by ordinary action, the protection afforded in O. 53 to public authorities such as the filter of a leave application and the limitation of time cannot be availed by the Sabah Government. In the instant case, the Sabah Government said that it imposed F a temporary ban to conduct studies on the benefit of log exports. However, the instant originating summons was only filed some ten months later as the appellant circumvented the limitation period of three months stipulated in O. 53 by filing an originating summons. In *O'Reilly v. Mackman* (*supra*), Lord Diplock said as follows about the delay in public law matters (quoted G in the Federal Court case of *Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors* by James Foong FCJ):

> The public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision- H making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision.

[25] For all the above reasons, we find much merit in the preliminary point taken by counsel for the respondent that the instant originating summons is an abuse of the process of the court and is therefore a non-starter.

I

Whether Challenge Of Appellant Is Against A "Decision"

[26] Counsel for the appellant submitted that the circular expressed a general policy and that it was not a "decision". That is the reason why an originating summons was filed instead of a judicial review application under O. 53 of the Rules of Court 2012. We find no merit in this submission. Counsel for the respondent pointed out that the appellant had written a letter to the Conservator of Forests on 6 September 2018 to apply for a permit to export logs to India. The reply of the conservator was that the application cannot be processed because of the circular which imposed a temporary ban on log exports. Counsel for the appellant argued that the said letter is not a proper application under s. 6 of the Forest (Timber) Enactment 2015 to be registered as an exporter. Be that as it may, the letter of the conservator stated no permit would be issued to export logs because of the ban imposed by the circular. Therefore, to all intents and purposes, it is very much a decision of a public authority that is amenable to challenge under O. 53 of the Rules of Court 2012. In the premises, the reason for not pursuing relief *via* a judicial review appears to be an afterthought.

Declaratory Relief Under O. 15 r. 6 And s. 41

[27] We are also of the view that the appellant cannot pray for declaratory relief as to any legal character or status under O. 15 r. 6 of the Rules of Court 2012 or under s. 41 of the SRA for the following reason. As matters stood at the time of the filing of the originating summons, the appellant's registration certificate to export logs had expired. Under s. 9 of the Forest (Timber) Enactment 2015, the renewal application must be made 60 days before expiry. The appellant did not apply to renew within the said 60 days. By the time the letter dated 6 September 2018 was submitted to the conservator, the registration certificate had expired and no fresh formal application was made under s. 6 as stated by counsel for the appellant. In the premises, the argument that the appellant is entitled to a declaration as to any legal character or status is without basis in fact for the reason that their registration certificate had been allowed to expire and there is no proper application for a fresh certificate. Therefore, the originating summons, if intended to seek only declaratory relief in respect of legal character or status, is premature. There was no pending application for renewal and the previous registration certificate or licence had expired.

Conclusion

[28] For all the above reasons, we were of the view that the originating summons is an abuse of the process of the court and is premature. For that reason, although we are in agreement with the High Court that the Sabah Government has the power to issue the circular in question and impose a temporary ban on log exports, we found it unnecessary to consider the said issue at any length. The appeal is dismissed and the decision of the High Court is affirmed with no order as to costs.